REMARKS

Claims 1-28 are pending, with claims 1, 15, 18 and 24 being independent. Reconsideration and allowance of the above-referenced application are respectfully requested.

Claims 1-26 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Foster (US Patent 6,675,382) in view of Davis (US Patent 6,279,154). Claim 27 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Foster in view of Davis, as applied to claim 1, and further in view of Forbes et al (US Patent 6,381,742). Claim 28 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Foster in view of Davis, as applied to claim 2, and further in view of Hesse et al (US Patent 5,950,010). These contentions are respectfully traversed.

The Official Action equates the software package described in Foster with the presently claimed X-package, and relies on Davis to teach a package importer or package importing operation. (*See* Office Action at page 3.) With respect to the first point, it should be noted that the claimed X-package is created in addition to a received software package and enables multivendor package management. In contrast, Foster is directed to generating the software package itself for distribution to

end-users by a specific vendor. (*See* Foster at col. 1, line 25 to col. 3, line 52.)

Independent claim 1 recites, "a package importer to receive said at least one software package, where said package importer creates an X-package document based on said vendor package template in preparation for later software distribution and installation." Independent claim 15 recites, "a package importer to receive said at least one software package, said package importer creates an X-package document based on said vendor package template in preparation for later software distribution and installation." These claims are very clear that the package importer operates to create an X-package after the software package itself has already been created. Thus, the Official Action's contention that the software package of Foster can be equated with both the claimed software package received by the package importer and the claimed X-package created by the package importer, cannot be maintained. Similar reasoning also applies to independent claims 18 and 24.

Davis fails to cure the defects of Foster. The Official Action states that, "Davis, in turn, suggests a package importer," but fails to cite effective support for this contention. (*See* Office Action at page 3.) The cited portions of Davis all describe installing an already obtained software

package, not importing a software package for later software distribution and installation. Moreover, the earlier portions of Davis' installation operation (see Office Action at page 4) do not describe a package importer, but rather describe opening of a configuration file at 71 and accessing installation components to generate a taskmanager's list of tasks at 75-85. While these early portions of the installation procedure may be considered importation of data at the beginning of software installation, they cannot be considered importation of a software package for later software distribution and installation.

Finally, all of the independent claims recite, "said X-package in a format that makes said X-package manageable in a software package management system independent of vendor-specific aspects of the at least one software package." Foster does not describe an X-package (for the reasons addressed above), nor a format that makes the X-package manageable in a software package management system independent of vendor-specific aspects of a software package. Foster's common set of attributes, which are reference by the Official Action (*see* Official Action at page 5), are attributes of the software package, not of an X-package created after the software package.

Moreover, Davis does not cure the deficiencies of Foster. As noted in the response submitted August 4, 2005, Davis describes a software user interface that provides a common view of installation to a user at a target machine, so the user does not have to use different user interfaces provided by each third party software application's install system or process. In response, the Official Action states, "Certainly the 'format' of a software package created in such a manner permits, and does not preclude, the common interface." (See Office Action at page 5.) While this may be true, it does not address the claim limitation at issue.

The claim recites a format that makes said X-package manageable. For example, the format can include extensible Markup Language (XML) information that lets vendor-specific aspects of the software-package be abstracted away from the perspective of the software package management system. Thus, the management system code can be simpler and easier to write once the specified format of the X-package has been adopted. Nothing in Davis or Foster suggests creating an X-pacakge in such a format. The common view provided by Davis could be generated using software that is specifically programmed for each different vendor. There is no implication that the provision of a common view of installation software from

different vendors necessarily uses a format that makes a package manageable in a software package management system independent of vendor-specific aspects of the software package. Thus, this limitation is neither expressly nor inherently present in Davis.

Attention is called to *In re Lee*, 277 F.3d 1338 (Fed. Cir. 2002), in which the Federal Circuit vacated a Patent Office Board affirmance of an obviousness rejection because, rather than relying on objective evidence, the Patent Office based its obviousness rejection on conclusory statements having no evidentiary support in the record. *Id.* at 1342-43. In doing so, the Federal Circuit made it abundantly clear that "subjective belief and unknown authority" and "[assertions of] common knowledge and common sense" are not "a substitute for evidence." *Id.* at 1343-44.

The present application describes the claimed invention clearly, using multiple examples:

> The present disclosure describes a Multiple Vendor Package Management (MVPM) system, which provides a means for managing packages from different vendors. The management means may also include elements for managing different operating systems, in a uniform and consistent manner. Furthermore, the MVPM system provides a means for importing the package into the system.

> [...] [A] vendor-specific software package 102 is imported into the system 100 by a package importer 108. The package importer 108 receives the vendor-specific software package 102 and creates a new package document referred to as an X-package 120. [...]
>
> Once the X-package 120 is created and attributed, the X-package 120 may be transferred to the target computer 106 for distribution. The transfer may be accomplished using either push or pull distribution.

(*See* Specification at page 3, lines 22-23; page 4, lines 1-5 and 12-17; and page 6, lines 1-4.)

Thus, the claimed subject matter clearly covers a Multiple Vendor Package Management (MVPM) system in which pre-existing software packages can be imported from different vendors, X-packages can be created for the pre-existing software packages such that the MVPM system need only then interface with the X-packages, and the pre-existing software packages can then be distributed by the MVPM system (using the X-packages) to target systems for installation.

In contrast, Davis is directed to an install system that allows a user to install different software packages on a given target computer using a common installation interface. (*See* Davis at Abstract.) Foster is directed to a software packaging system that is portable across many platforms. (*See* Foster at Abstract.) Neither Foster nor Davis teach or suggest, either

alone or in combination, a Multiple Vendor Package Management system that creates X-packages (using the claimed format) from pre-existing software packages in preparation for later software distribution and installation.

For all of the above reasons, independent claims 1, 15, 18 and 24 should be in condition for allowance. Dependent claims 2-14, 16-17, 19-23, and 25-28 are patentable based on the above arguments and based on the additional recitations they contain.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific issue or comment does not signify agreement with or concession of that issue or comment. Because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

It is respectfully suggested for all of these reasons, that the current rejection is totally overcome; that none of the cited art teaches or suggests the features which are now

claimed, and therefore that all of these claims should be in condition for allowance.

A formal notice of allowance is thus respectfully requested.

Please apply any necessary charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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